

DATE: December 21, 2005

FILE REF: NR 135/NMAC

TO: Nonmetallic Mining Advisory Committee (NMAC)

FROM: Tom Portle

SUBJECT: Minutes of October 20, 2005 and December 1, 2005 Nonmetallic Mining Advisory Committee Rule Revision Workshop Meetings

October 20, 2005

**NMAC members present:** Bruce Brown, Sue Courter, Mike Erickson, Ron Garrison, Marty Lehman, Ed Reesman, Bryce Richardson & Gary Werner

**Sitting in for NMAC member:** Justin Cavey (for Jim Burgener), Matt Bremer (for Matt Stohr)

**NMAC members not present:** Jim Burgener, Matt Stohr

**WDNR Staff Present:** Dan Graff, Dave Misterek, Steve Drake, Larry Lynch and Tom Portle

**Others Present:** Dean Graff, Door County SWCD, Clint Weninger, Payne & Dolan, Tom Walker, Wisconsin Transportation Builders Association, Wendy Giese, Fond du Lac County, Gerry Kokkonen Jefferson County, LWCD

December 1, 2005

**NMAC members present:** Bruce Brown, Ron Garrison, Ed Reesman, & Gary Werner

**Sitting in for NMAC member:** Justin Cavey (for Jim Burgener), Matt Bremer (for Matt Stohr)

**NMAC members not present:** Jim Burgener, Matt Stohr, Sue Courter, Mike Erickson, Marty Lehman, Bryce Richardson

**WDNR Staff Present:** Dan Graff, Dave Misterek, Phil Fauble, Deb Pingel, Larry Lynch and Tom Portle

**Others Present:** Dean Graff, Door County SWCD, Clint Weninger, Payne & Dolan, Tom Walker, Wisconsin Transportation Builders Association, Julie Hill, Vernon County

Following is a report on the main points from the two rule revision “workshop-meetings” of the NR 135 Nonmetallic Mining Advisory Committee [“NMAC”], held on October 20, 2005, from 10-1 at the State Lab of Hygiene in Madison, WI and on December 1, 2005, from 10-4 at the Darwin Road Facility in Madison, WI.

## **Proposed Rule Revisions**

Chapter NR 135, Wis. Adm. Code, has been in effect since December 2000. As a result of nearly five years of experience gained in administration of the program, the need for refinement of certain procedures and clarification of existing language has become apparent. The department has accepted suggested rule changes from a wide spectrum of stakeholders. The two meetings were much more informal than typical NMAC meetings so as to accommodate the rule-making process and to best access the combined expertise and perspective of attendees. Each meeting was followed by discussions, proposed revisions to rule language that was on the table.

The staff will request authorization to take the rule to public hearing and open a public comment period on the rule at the Board's February 22, 2006 meeting. Once authorization is received the proposed rule language will be made available on-line.

The following is a list of the more important proposed changes:

a. Remove "start-up" language from the rule

These rule changes will address the above items as well as remove "start-up" language from the rule that is no longer applicable. Numerous provisions were included in the rule to for special permitting and review processes for operations that were active at the beginning of the mine reclamation program are no longer necessary or applicable and must be removed.

b. Clarify and simplify through improving fee collection and timing

Fee collection and reporting timing item – revise rule so that fee collection and annual reporting required of operators is less confusing and more efficient. Currently operators pay fees by anticipating unreclaimed acreage in the forthcoming year and provide annual reports based upon the previous year. Proposed language revises NR 135.39 so that there would only be one deadline for both fee submittal and for the submittal of the annual report and both are based on unreclaimed acreage in the previous year.

c. Fee increase

Fee increases are proposed in the rule to reflect adjustments for inflation. Mainly, this will affect the DNR portion of fees collected by regulatory authorities and forwarded to the DNR to cover administrative costs. Fees that the DNR would assess if the DNR had to become the regulatory authority would also be adjusted.

d. Dispute Resolution

Currently, DNR can work to assist in the resolution of disputes between operators and regulatory authorities. The process is often inefficient and the outcomes are sometimes vague. In the proposed NR 135.52 the process has been revised to add a process that will: clarify the roles of each party, steps to be taken and corresponding timeframes. The existing statutes do not allow the DNR to render a binding decision, as requested by commenters. However, DNR will provide a written opinion which will add value and clarity and set the stage for any appeals NR 135.30.

e. Clarify language based on experience

Various minor wording changes to rule language to address very specific issues that have arisen over the past five years and some changes to definitions were made. One area that has received attention is the safety and stability of slopes that exceed 3:1 after site reclamation. Discussions on October 20 resulted in making it clear that the “site specific engineering analysis” would be performed by a registered professional engineer. Also on October 20 it was determined that “safety “as meant in NR 135.10 should be defined as (suggested by Ed Reesman). Later the definition of safety proved problematic and efforts were redirected towards reworking NR 135.10 and supplying complementary language in NR 135.19 (4) (a). Also, some minor changes to reclamation plan submittal requirements, public hearings, conditional approvals and notes are proposed. Some discussion of one acre exemption and “life of mine” issue and language changed to clarify. Changes to definitions include: removal of “Existing mine”; addition of “Highwall” and “Person” were added. Definitions were added or revised to reflect changes in statutes that affect professional geologists/hydrologists and engineers.

f. Harmonize Financial Assurance with NR 340

The use of additional options that can be employed to satisfy NR 340 financial assurance requirements, as provided in recent statutory changes. The anticipated changes will reflect the statutory changes and will also make the financial assurance provisions of Ch. NR 340, Wis. Adm. Code, more consistent with corresponding provisions of Ch. NR 135, Wis. Adm. Code.

► *Next Meeting*

The NMAC decided to meet again on May 26, 2006 after the public hearings are held.